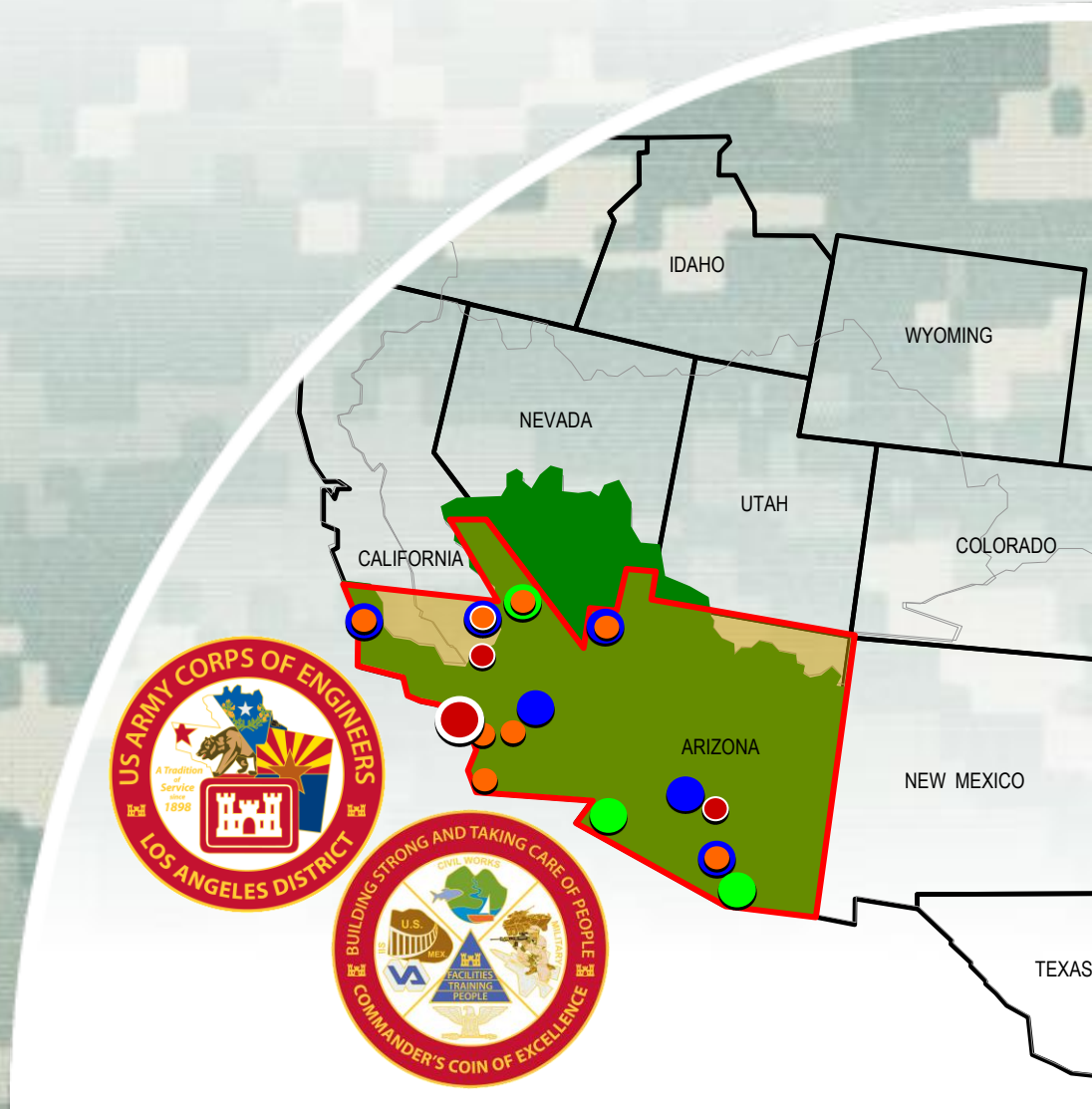
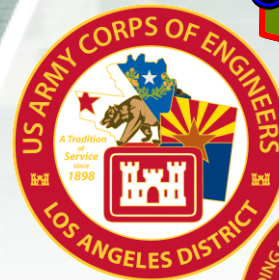


# U.S. Army Corps of Engineers Regulatory Program

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October 29, 2015



US Army Corps of Engineers  
**BUILDING STRONG®**





# US Army Corps of Engineers

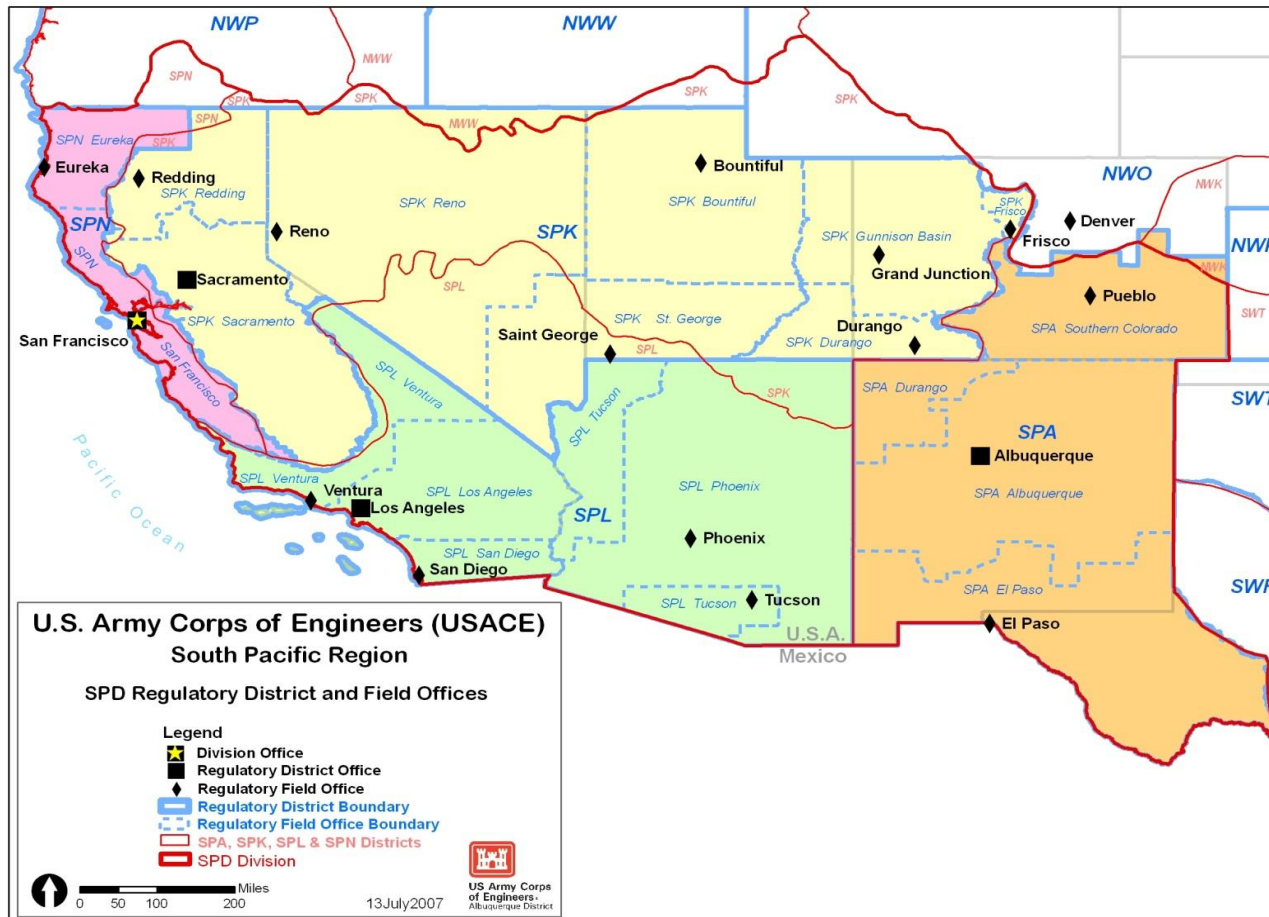


## Other MSC Levels

- USACE Headquarters
- USACE Finance Center
- Humphreys Engineer Ctr Support Activity
- 249th Engineer Battalion/Prime Power
- Institute for Water Resources



# Los Angeles District



Regulatory Division Boundary in Green



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# Overview

- When is a Corps Permit Required
- Geographic Jurisdiction
- Regulated Activities
- Types of Permits
- Permit Conditions
- Exemptions
- Related Laws and Regulations
- Questions





# When Is A Corps Permit Required?

- Clean Water Act

- Goal of CWA: Protect and restore the chemical, physical and biological integrity of the nation's waters
- Passed in 1972

- Section 404 of the Clean Water Act

- Regulates the Discharge of fill material into waters of the United States
- 2 Tests: Location and Activity
- Does not include “waste”
- Other sections administered by other state and federal agencies

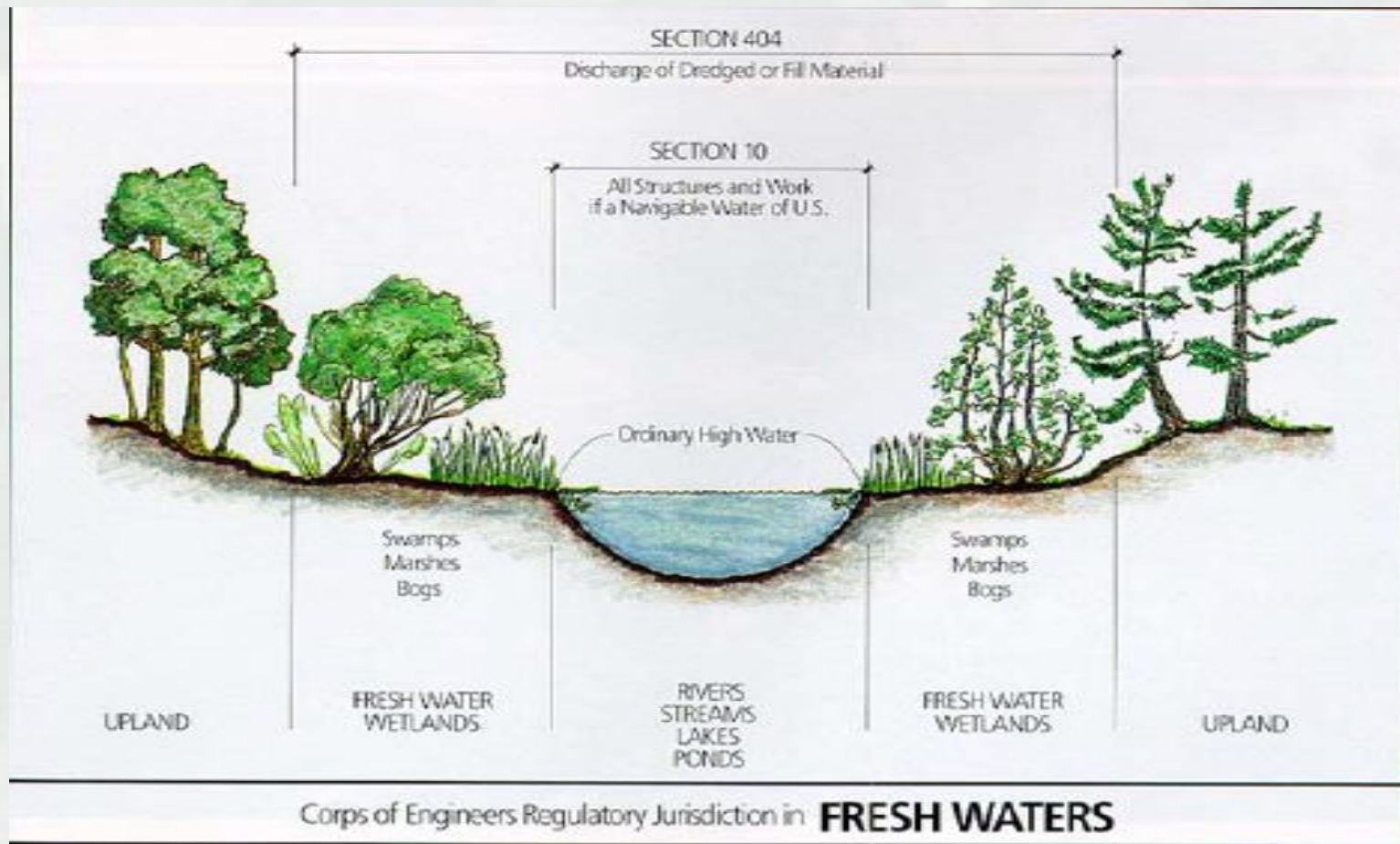


# Geographic Jurisdiction

- Waters of the U.S. as defined in the ~~Clean Water Rule~~
  - Traditional navigable waters
    - used for interstate commerce
  - Interstate waters
  - Territorial seas
  - Impoundments
    - e.g. Lake Piru
  - Tributaries
    - anything tributary to the first 3 categories
  - Adjacent waters
    - wetlands and other features adjacent to the above categories waters
  - Case-specific waters (two classes)
    - require case-by-case evaluation for significant nexus to above categories of waters



# Geographic Jurisdiction





# Where is the OHWM?





# Ordinary High Water Mark

- Represents an average high flow
- Not tied to a specific recurrence interval (e.g. 5-year flood, 50-year flood, etc)
- Based on physical indicators
  - Eroded banks
  - Debris lines
  - Changes in vegetation
  - Scour
- Not permanently fixed—can change over time in response to natural processes
  - Jurisdictional determinations generally valid for 5 years.



# Ordinary High Water Mark

“that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area.”



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# Ordinary High Water Mark





# Ordinary High Water Mark



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# Adjacent Wetlands

- Extend outside the limits of the ordinary high water mark
- Determined in accordance with Corps of Engineers 1987 Wetland Delineation Manual plus regional supplements
- 3-Parameter Test
  - Wetland hydrology
  - Predominance of wetland vegetation
  - Hydric soils



# Adjacent Wetlands



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# Discharge of Fill Material

## Temporary



## Permanent



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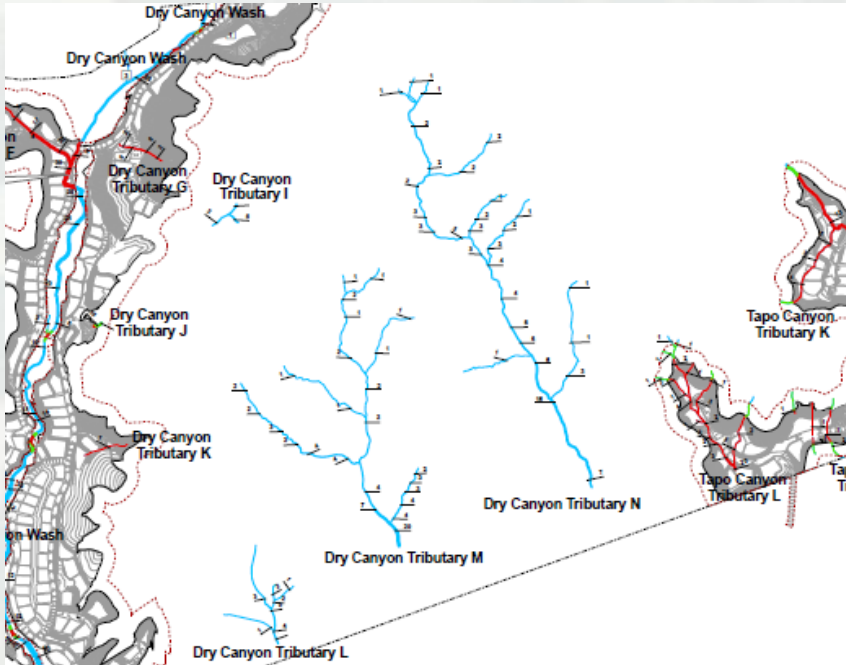
# Regulated Activities

- Section 404 of the CWA regulates the discharge of dredged or fill material into waters of the U.S.
- Permanent structures and/or fill in waters (e.g. dams, levees, culverts, development)
- Temporary discharges (buried utility lines, surface water diversions, access ramps)
- Does not include “clean” excavation including “incidental fallback”
- Does not include above-ground vegetation removal
- Does not include effluent/waste disposal (regulated under Sec. 402)

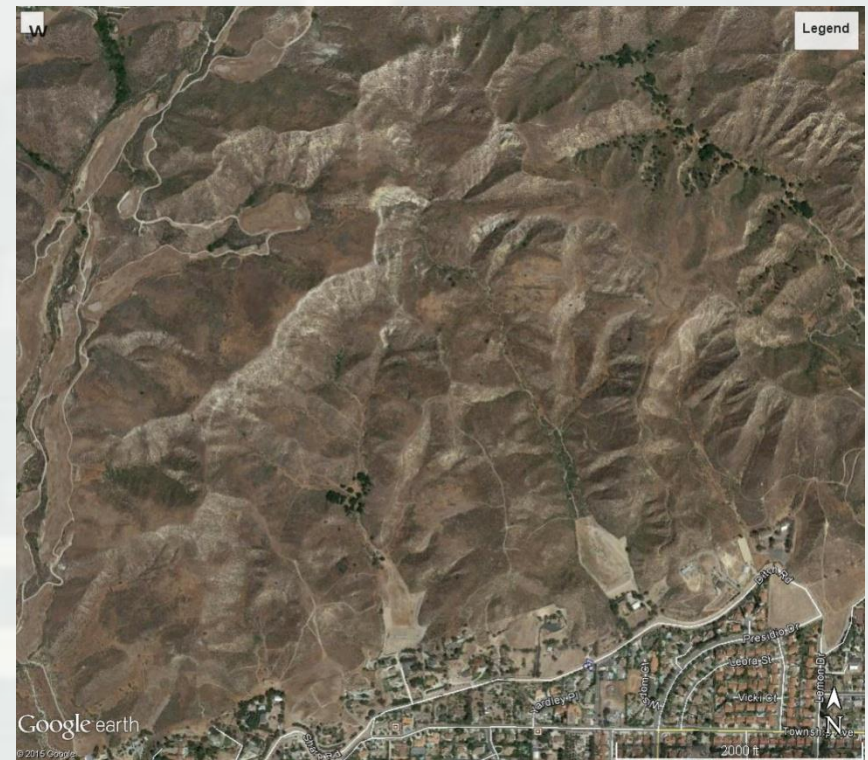


# Jurisdictional Delineation

## Delineation map



## Aerial view





# Types of Permits: SIPs

- Standard Individual Permits

- Projects with more than minimal impacts

- Require issuance of a public notice (mailing list + adjacent property owners)

- Require preparation of an EA or EIS under NEPA

- analogous to MND and EIR

- 404b1 alternatives analysis to determine “least environmentally damaging practicable alternative”

- Public Interest review

- May be issued for more than 5 year duration



# Types of Permits: GPs

- Nationwide Permits (NWP)

51 activity specific programmatic permits issued at the national level authorizing activities with minimal impacts (typically less than ½-acre of permanent impact)

Examples include Road Xings, Levees >500 linear feet, Maintenance, Utility lines, Restoration projects,

Some do not require notification to the Corps

80-90% of permits issued

- Regional General Permits (RGP)

Developed by individual Corps Districts to address local needs

Can be developed for a specific entity (e.g. City of Santa Maria's Maintenance RGP)

...Or for any applicant (e.g. Emergency Actions)

SIP-type process is followed to establish the RGP on a programmatic basis

Allows more streamlined process once established



# Permit Conditions

- General conditions that apply to all permits
  - No jeopardy to threatened/endangered species
  - Historic properties
  - Use of suitable material, etc
- Regional Conditions that apply to Nationwide Permits developed by each Corps District
  - Notification in Santa Clara River Watershed
  - Restriction on NWP's vernal pools
- Special Conditions exclusive to the permit being issued
  - Compensatory Mitigation
  - Restore to pre-project contours





# Exemptions & Exclusions

- Exemptions relate to activities, exclusions to geographic jurisdiction
- Exemptions
  - Normal farming activities
  - Maintenance
  - Construction/maintenance of farm and forestry roads
  - Note that activities incidental to an exempted activity often require a permit
- Exclusions
  - Prior converted cropland
  - Waste treatment systems
  - Certain types of ditches excavated in and draining uplands
  - Erosional features, gullies, swales, etc
  - Groundwater



# Related Laws and Regulations

- Section 401 of the CWA

- State-Administered component of the CWA addressing water quality

- CA = Regional Water Quality Control Boards

- Any 404 permit must have a companion 401 cert

- May be issued on a programmatic basis

- Endangered Species Act

- Activities funded, undertaken or authorized by a federal agency must comply with ESA

- Requires Corps to consult for any proposed authorization that may effect a threatened/endangered species and/or designated critical habitat

- Corps (or lead fed agency) conducts Consultation with USFWS/NMFS



# Related Laws and Regulations

- **National Historic Preservation Act**

Section 106 of the NHPA requires the Corps to consider effects to historic properties and tribal interests

“Historic Properties” is a very broad term and can include shipwrecks, buildings, trash middens, human remains and culturally and historically significant resources

Consultation with tribes and State Historic Preservation Office

- **Federal Coastal Zone Management Act**

Only applies to federal actions within or affecting the coastal zone

Administered by California Coastal Commission

Corps permits must demonstrate consistency with the CZMA





# A Very Basic Process....

- Where is the activity in relation to waters of the U.S.?  
JD completed?
- What is the nature of the work?  
Discharges of fill material?
- Is it exempt?
- Does it qualify for a General Permit?
- Are there T&E species?
- Historic Properties?
- Mitigation required?
- Water Quality Cert issued?
- Permit issued!



# Questions?



<http://www.spl.usace.army.mil/Missions/Regulatory.aspx>  
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